

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
RANDOLPH WASHINGTON,

Plaintiff,

-v.-

OFFICER LAMAR et al.,

Defendants.  
-----X

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: REPORT AND RECOMMENDATION

: 11 Civ.1183 (RJS)(GWG)

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**GABRIEL W. GORENSTEIN, United States Magistrate Judge.**

The complaint in this matter was filed on February 14, 2011. (Docket # 2). As of July 1, 2011, no return of service had been filed with the Court as to any of the defendants. Rule 4(m) of the Federal Rules of Civil Procedure provides:

If a defendant is not served within 120 days after the complaint is filed, the court – on motion or on its own after notice to the plaintiff – must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

Accordingly, the Court issued an Order on July 1, 2011 informing plaintiff that he was required either to serve the summons and complaint on or before August 1, 2011, or to seek an extension of this deadline by showing good cause for his failure to effectuate service. (Docket # 10). This Order specifically informed the plaintiff that his case could be dismissed if he failed to comply with these directives.

Plaintiff did not respond to the July 1, 2011 Order. Accordingly, on August 15, 2011, the undersigned issued a Report and Recommendation recommending that the case be dismissed under Rule 4(m) for failure to serve the complaint within 120 days of its filing. (Docket # 11).

The district court issued an Order on September 12, 2011, adopting this recommendation and the case was dismissed. (Docket # 12).

On October 27, 2011, the undersigned received an undated letter from plaintiff saying that because of his movements between prison facilities his legal mail was “behind schedule.” (Docket # 13 (attachment)). Accordingly, on October 31, 2011, the district court issued an order vacating the dismissal and extending until December 31, 2011, plaintiff’s deadline to effectuate service. (Docket #13). The docket sheet reflects that a new service packet was sent to plaintiff on November 21, 2011.

Despite the Order requiring service by December 31, 2011, no proof of service has been filed as to any defendant. Nor has plaintiff requested an extension of time for service or shown good cause for failing to serve defendants. In addition, the U.S. Marshals Service has informed a clerk to the undersigned that it has never received a request from plaintiff to effectuate service.

For these reasons, and because this is not a case in which the Court should exercise its discretion to grant an extension in the absence of good cause, see Zapata v. City of New York, 502 F.3d 192 (2d Cir. 2007), this matter should be dismissed without prejudice pursuant to Rule 4(m).

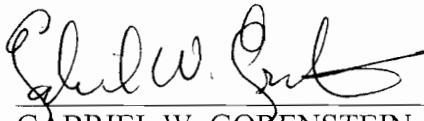
**PROCEDURE FOR FILING OBJECTIONS TO THIS  
REPORT AND RECOMMENDATION**

Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties have fourteen (14) days including weekends and holidays from service of this Report and Recommendation to serve and file any objections. See also Fed. R. Civ. P. 6(a), (b), (d). Such objections (and any responses to objections) shall be filed with the Clerk of the Court, with copies sent to the Hon. Richard J. Sullivan, and to the undersigned, at 500 Pearl

Street, New York, New York 10007. Any request for an extension of time to file objections must be directed to Judge Sullivan. If a party fails to file timely objections, that party will not be permitted to raise any objections to this Report and Recommendation on appeal. See Thomas v. Arn, 474 U.S. 140 (1985); Wagner & Wagner, LLP v. Atkinson, Haskins, Nellis, Brittingham, Gladd & Carwile, P.C., 596 F.3d 84, 92 (2d Cir. 2010).

SO ORDERED.

Dated: February 2, 2012  
New York, New York

  
GABRIEL W. GORENSTEIN  
United States Magistrate Judge

Copy to:

Randolph Washington  
09-A-5283  
Sing Sing Correctional Facility  
354 Hunter Street  
Ossining, New York 10562-5442